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11/25/24

To: The ACF Committee

RE: Permitting Requirements in the ACF

Summary:

The following is a brief summary of the permitting process for trails in the ACF. I have concluded that expanding the existing trail network is a major amendment to the site plan approved by the Development Review Board in application 2020-039. Unless waived by the Development Review Board you are required to have a site plan prepared by a registered land surveyor, professional planner, engineer, architect or landscape planner. Any trail located on a slope that is between 20-35% shall require engineered plans for erosion control if it meets the definition of construction. Hiking trails that don't meet the definition of construction below can be built with DRB approval on slopes of 20-25% without erosion control plans provided they do not meet the definition of construction. No land development is permitted on slopes of 35% or more. In addition, trails constructed on slopes less than 20% will face a less burdensome approval process. The following will expand on this in more detail.

Defining Trails

Before delving into the permitting history of ACF and the requirements for further development it is important to understand why trails are land development. Trails are not specifically mentioned in the Zoning Regulations. Whenever something is not defined in the regulations the Zoning Administrator has to look to the common dictionary understanding of a term. Merriam Webster defines trails as "a marked or established path or route especially through a forest or mountainous region". While trails are not defined as a use in the zoning regulations recreational paths are noted in Section 2.4.4 and are allowed in all districts; however, there is currently no definition for a recreational path in the zoning regulations. Despite this it would appear that recreational paths meet the definition of a trail as noted above. To understand why recreational paths count as land development we have to look at Section 7 of the regulations. Section 7 notes that any change in the use of land or extension of use of land counts as Land Development. Section 1.2 of the Zoning Regulations notes that a Zoning Permit is required for Land Development. This definition becomes important when considering the location of trails in Site Plan Review and the permitting history for ACF. Based on the above I concluded that trails are recreational paths and are allowed in all districts. However, they count as land development as a trail changes the use of land as noted in Section 7. In addition, given that the use of ACF is for outdoor recreation expanding that use would also count as land development as noted above.

Permitting History

On June 10, 2020 the DRB approved a Conditional Use application 2020-039 to change the use of ACF from agricultural/ forest to outdoor recreation. The board approved the project using a conceptual trail plan, submittals H and I, that showed no trails proposed above the VELCO powerline. The Findings of Facts did note in submittal G. that there were a series of logging and farm access roads that people use for recreation. The DRB approved the change in use from Agricultural/ Forest to Outdoor Recreation with

several conditions. Condition 1 noted that all further land development was approved unless the Zoning Administrator determined that the DRB needed to review the application. In addition condition 3 noted that the project would be built according to the plans submitted which included the trail plan noted above.

Necessity of DRB Approval

I have determined that the DRB needs to approve the site plan for ACF for the following reasons. An Outdoor Recreation Facility or Park requires conditional use approval by the DRB as noted in Section 3.2.2.m. Conditional Use Review is subject to Section 5.6 and Section 5.5.3 of the Richmond Zoning Regulations. Section 5.5.3.a.vi notes that trails must be shown on the site plan. Section 5.5.5.a-b notes that changes to pedestrian circulation patterns count as a Major Amendment to a site plan and require approval by the DRB. None of the proposed trails above the powerline were included in the trail plans in submittal H and I of application 2020-039. In addition, condition 3 of the DRB's decision noted that the project would be developed according to the plans submitted. Adding new trails beyond what was originally presented to the DRB changes pedestrian circulation patterns, and is an expansion of the use as noted in the definition of land development noted above thus triggering a Major Amendment.

Permitting Process

Since the use of this parcel is for outdoor recreation facility or park an extension of that use would fall under the definition of land development and would require permitting. To amend the ACF site plan you will need to apply for Site Plan Review. Just for reference this is the same process that the baseball fields at Browns Court are going through. The town would be responsible for preparing the application. The relevant sections for site plan approval are 5.5, 4, 6.1 and in your case 6.11 if you are proposing development on slopes that are over 20%. Section 6.11 notes that any construction occurring on slopes of over 20% shall provide engineered plans for erosion control. Meriam Webster defines Construction as "to form by combining or arranging parts or elements". Given that these trails would need to be constructed they would be subject to the requirements noted in Section 6.11. In addition, any proposed land development on a slope greater than 35% would be prohibited as is noted in Section 2.5.2.b.

In addition, unless waived by the DRB for good cause site plans shall be prepared by a professional engineer, planner, or architect. You can request a waiver from this requirement, but waivers are at the boards discretion. If you would like a waiver you will need to make the argument why you should not have to meet this requirement. The Arrowood report appears to be prepared by an ecologist which is not listed as one of the approved professionals to prepare a site plan. However, given the detail in the report the DRB may consider granting you a waiver from this requirement. This waiver request would not extend to the erosion control measures noted in Section 6.11 as these have to be prepared by a professional engineer and there is no waiver process for this requirement noted in this section. Once the DRB approves the site plan you can move forward with pulling permits to build the trails.

Permitting Challenges for Proposed Trails

One of the challenges around permitting trails above the power line will be making sure that none of the trails are built on slopes that are greater than 35%. In an email dated 11/19/24 there were two attached maps that indicated the rough slope of some of the proposed trails. The lower section of trails, Rocky View and Stream View, appear to be on slopes greater than 35%. As previously noted all land development on a slope of 35% or more is prohibited per Section 2.5.5.b. In addition, the proposed Hemlock Valley and East Climb Trails appear to be on slopes that are 20-36% grade. The exact grade of the trails will need to be verified. Any portion of the trail that is on a slope of greater than 35% would have to be relocated to a lower grade. All of the trails as currently shown would be required to have an erosion control plan prepared by a licensed engineer. Trails that are located on slopes that are less than 20% do not have to have professional erosion control plans though the DRB could impose this as a condition of approval if they chose to. In short your major permitting challenges would consist of insuring that no trails are located on slopes that are more than 35%. Slopes between 20 -35% will require

professional erosion control plans prepared by a licensed engineer. Despite these challenges you can build hiking trails between 20 -35% without a professional erosion control plan provided however they cannot rise to the level of construction per the definition noted above. An example of this would be a hiking trail where the only work performed is removing deadfall and debris and marking the trail location. Once you start shaping the land itself or installing structures it will meet the definition of construction and will trigger the requirements noted in Section 6.11. The DRB would still have to approve the location of these trails. However trails located on slopes of 35% or more would still be prohibited as it would still meet the definition of land development noted in Section 7.

Recommendations

In order to move forward with constructing trails in the ACF I would encourage the committee to consider the following. Focus trail construction in areas that have a slope of less than 20%. Utilize hiking trails with no construction in areas that are between 20 -35 %. Make use of the existing agricultural or forestry roads as forestry and agriculture are exempt from zoning per Section 5.1.1 . In addition, these existing trails can be maintained to allow for pedestrian use. Design trails to avoid areas that are over 35%. Consider applying for a limited number of trails on grades less than 19% in order to simplify and speed up the application process while developing a longer-term plan for trails on slopes of 20-35%, as these will take longer to permit. In addition, you could consider building more trails below the power lines utilizing connections between your existing trails. This may help to speed up the permitting process and help your committee develop a better understanding of how to permit longer, more complex trails. This committee could also consider working with the Planning Commission to make changes to the zoning regulations to make it easier to construct trails. Ultimately this committee will need to decide the approach it wishes to take.

Conclusion:

Hopefully this will help the committee decide how to best move forward with expanding the trail network in the ACF. It is important to remember that permitting new trails will be a slow process that will likely take months to run through. I do not say that to discourage you, rather I want to give you a realistic idea of the time it takes to move through the process. I am aware of how much work this committee has put into this project over the years. There is a path forward to expand the trail network in the ACF, it will take time, but I am happy to help move you through the process.

Sincerely
Tyler Machia
Zoning Administrator